

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GEORGE UBERTI,

Plaintiff,

No. C 19-02338 WHA

v.

SONOMA COUNTY BOARD OF  
SUPERVISORS and SONOMA  
COUNTY AUDITORY-CONTROLLER-  
TREASURER-TAX COLLECTOR

Defendants.

**ORDER REMANDING  
ACTION TO SONOMA  
COUNTY SUPERIOR COURT**

**INTRODUCTION**

In this removed action, Magistrate Judge Sallie Kim filed a Report and Recommendation, recommending that the action be remanded to the Sonoma County Superior Court. For the reasons below, the Report and Recommendation is **ADOPTED** and the action is **REMANDED** to the Sonoma County Superior Court.

**STATEMENT**

On February 8, *pro se* plaintiff George Uberti brought this action against the Sonoma County Board of Supervisors and the Sonoma County Auditory-Controller-Treasurer-Tax Collector. Plaintiff sought monetary damages, alleging that the Board's decision to consolidate the Auditor Controller Treasurer and Tax Collector duties violated, *inter alia*, 15 U.S.C. § 2 (Dkt. No. 1-1 at 2, 8).

1 On April 29, plaintiff (not defendants) removed the action to this district on the grounds  
2 that the action “concern[ed] the substantial mismanagement of Federal Funds” and that “the  
3 heads of county government [should] be tried outside the venue in which they may exert their  
4 influence” (Dkt. No. 1 at 2). Plaintiff also filed an application to proceed *in forma pauperis*  
5 (“IFP”) and moved for permission to file electronically (Dkt. Nos. 2–3).

6 On May 9, Magistrate Judge Sallie Kim filed a Report and Recommendation concerning  
7 plaintiff’s removal, IFP application, and motion to file electronically (Dkt. No. 6). Judge Kim  
8 granted plaintiff’s application for IFP, denied his motion for electronic case filing, and  
9 recommended that the action be remanded to state court on the basis of improper removal  
10 (*id.* at 1–2). Plaintiff filed his objections to the Report and Recommendation on May 22 (Dkt.  
11 No. 10).

## 12 ANALYSIS

13 When a party objects to a Report and Recommendation, “[a district court judge] shall  
14 make a de novo determination of those portions of the report . . . to which objection is made.”  
15 28 U.S.C. § 636(b)(1). Plaintiff’s objection to Judge Kim’s recommendation to remand relies  
16 on three arguments.

17 Plaintiff first argues that he met his burden of establishing federal jurisdiction because  
18 the action involves a federal question, giving the United States original jurisdiction pursuant  
19 to 28 U.S.C. § 1331. This argument alone is insufficient to establish that Judge Kim’s  
20 recommendation to remand was erroneous. In addition to establishing that the United States  
21 has original jurisdiction, the moving party must also adhere to the proper procedure for removal  
22 under 28 U.S.C. § 1446.

23 Next, plaintiff contends that Judge Kim erred in relying on 28 U.S.C. § 1446 to impose  
24 a time restraint on plaintiff’s removal, because she also found that the statute may not apply  
25 to plaintiff. Plaintiff misunderstands. Judge Kim’s recommendation did not rely on an  
26 inconsistent application of the statute. Judge Kim first questioned *plaintiff’s* ability to remove  
27 this action, as 28 U.S.C. § 1446 describes only a *defendant’s* ability to remove a civil action  
28 from state court (Dkt. No. 6 at 2). Judge Kim then noted that, *even if* plaintiff had authority to

1 remove under 28 U.S.C. § 1446, removal was improper because plaintiff removed the case from  
2 state court over thirty days after he originally filed suit (*ibid.*). Accordingly, Judge Kim found  
3 that, whether the statute applied to plaintiff or not, removal was improper and the action should  
4 be remanded to state court (*ibid.*). Further, because removal statutes are strictly construed,  
5 plaintiff's questionable authority to remove suggests that removal should not be permitted.  
6 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

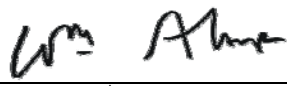
7 Finally, plaintiff argues that he has the authority to remove the action to this district  
8 under 28 U.S.C. § 1406(a), which governs transfer of a case from an improper venue to a proper  
9 venue. Plaintiff's argument fails for two reasons. *First*, contrary to plaintiff's assertions,  
10 Section 1406(a) does not grant plaintiff the authority to remove a case. 28 U.S.C. § 1406(a)  
11 states that when a case is filed in an improper venue, "[t]he *district court* . . . shall . . . transfer  
12 such a case to any district or division in which it could have been brought" (emphasis added).  
13 *Second*, transfer refers to the practice of moving a case from one federal district court to  
14 another, within the federal court system. Because this action originated in state court and  
15 plaintiff sought to *remove* it from state court to federal court, a *transfer* under Section 1406  
16 does not apply.

### 17 CONCLUSION

18 For the reasons stated herein, the Report and Recommendation is **ADOPTED**. The Clerk  
19 shall **REMAND** this action to the Sonoma County Superior Court and **CLOSE THE FILE**.

20  
21 **IT IS SO ORDERED.**

22  
23 Dated: June 10, 2019.

24   
25 \_\_\_\_\_  
26 WILLIAM ALSUP  
27 UNITED STATES DISTRICT JUDGE  
28